IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4198 OF 2006

1. Smt Meena Bhalchandra Kale,
since deceased through L.Rs, .. Petitioners
Vs
1.Sau Supriya Chandrakant Karkare
and ors. Respondents

Mr J.S.Deo, for the petitioners.
Mr S.S.Swadi i/b Mr S.G.Deshmukh, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 11.10.2006

PC:-

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr.Swadi, learned counsel, waives service for the respondents. By consent, rule is heard forthwith.

3. This writ petition is directed against the order dated 14.2.2006, which reads thus:

> "In view of order passed on Exh.82.Application is dismissed."

I perused the order passed on the application at Exhibit 82. Exhibit-82 application was filed by the respondents-judgment debtors for quashing and setting aside the execution proceedings and that was dismissed on 14.2.2006. It further appears that the Court Commissioner was appointed in view of the order dated 6.9.2003 passed in the Final Decree Application No.47 of

1984. By direction in paragraph 6 of the operative part of the order dated 6.9.2003, the Court Commissioner was appointed for effecting partition and taking all steps for putting the parties in actual possession of their shares. Accordingly, the Court Commissioner did his work and submitted his report on 21.12.2005. However, according to the petitioners, the Court Commissioner did not put him in possession as per the directions in the order dated 6.9.2003 and, therefore, he filed application at Exhibit-91 on which the order dated 14.2.2006, impugned in the present writ petition, has been passed. The learned Judge, while passing the said order, has simply stated that "in view of the order passed on Exhibit-82, the application is dismissed". This clearly shows nonapplication of mind. He ought to have considered the application at Exhibit-91 on merits and passed a speaking order thereon. In the circumstances, the writ petition is allowed. The impugned order is set aside. The application at Exhibit-91 stands restored to file. The Court below shall pass appropriate orders on the application within four weeks from the date of receipt of this order. The rule is disposed of.

(D.B.BHOSALE,J.)